

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRANDON ASSOCIATES, LLC,
Plaintiff,

v.

FAILSAFE AIR SAFETY SYSTEMS
CORP.,
Defendants.

CIVIL ACTION

NO. 04 12013NMG

SECOND MOTION TO AMEND VERIFIED COMPLAINT AND ACTION TO REACH
AND APPLY

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Plaintiff Brandon Associates, LLC hereby moves this Honorable Court to amend it's Verified Complaint and Action to Reach and Apply.

Procedural Background

Brandon Associates, LLC ("Brandon") filed the original Verified Complaint and Action to Reach and Apply ("Original Complaint") against FailSafe Air Safety Systems Corp., Inc. ("FailSafe") on September 8, 2004 in the Superior court of the Commonwealth of Massachusetts. On September 17, 2004, FailSafe removed the case to this Court on grounds of diversity jurisdiction.

On September 24, 2004, Brandon amended the complaint

pursuant to Fed. R. Civ. P. 15(a). On September 30, 2004, FailSafe filed an Answer and Counterclaim to the Original Complaint.

On October 4, 2004, FailSafe filed a Motion to Strike and for Sanctions. On October 18, 2004, Brandon filed a Response to Defendant's Motion to Strike and for Sanctions. On October 29, 2004 FailSafe filed a Reply to the Plaintiff's Response to the Motion to Strike and for Sanctions.

On October 28, 2004, FailSafe filed a Request for Default for the Counterclaim. On October 29, 2004, Brandon filed a Motion for Leave to Reply to the Counterclaim and a Reply to Counterclaim. On November 12, 2004, FailSafe filed an Opposition to Plaintiff's Motion for Leave To Reply to Counterclaims.

Argument

The Plaintiff respectfully requests that this Court grant this motion to all the second Amended Complaint as the Second Amended Complaint is a good faith effort by counsel to streamline the litigation in this Court. As this Court can see from the number of documents already filed in this case, this case is likely to be sidetracked from the heart of the dispute - i.e., the breach of

contract.

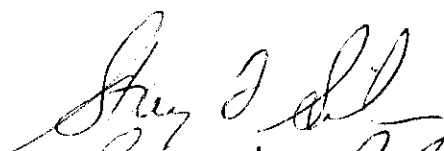

As of the time of this motion, Defendant FailSafe Air Safety Systems Corp. has not responded to the first Amended Complaint. Moreover, three of the four proposed defendants to the first Amended Complaint have neither answered to Amended Complaint nor even filed a Notice of Appearance with this Court. The fourth proposed defendant has filed a Notice of Appearance and a Motion to Dismiss, but has not Answered the Amended Complaint.

This Second Motion to Amend, which does not seek to add any parties, is in no way an admission by Brandon Associates, LLC that it did not have sufficient evidence to prove the claims listed in the first Amended Complaint. Rather, by moving to amend the complaint a second time, it is the Plaintiff's good faith effort to simplify this case so that the focus of the remains on the most central issue - the alleged breach of contract between the Parties.

Conclusion

Wherefore, the Plaintiff Brandon Associates, LLC respectfully requests that this Court grant its Second Motion to Amend the Verified Complaint and Action to Reach and Apply.

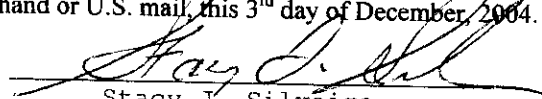
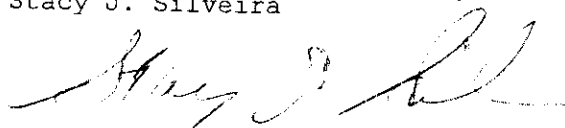
Respectfully submitted,

Stacy J. Silveira, BBO # 650675.
Brandon Associates, LLC
160 Commonwealth Avenue
Boston, MA 02116

CERTIFICATE OF SERVICE

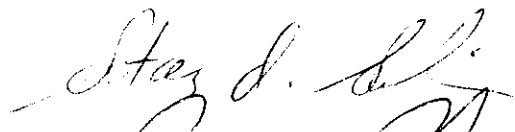
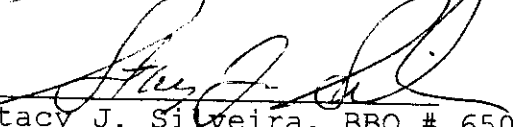
I hereby certify that I caused a true copy of the above document to be served
upon the attorney of record for each of the other parties in this action
by hand or U.S. mail, this 3rd day of December, 2004.


Stacy J. Silveira

AFFIDAVIT OF COUNSEL

I, Stacy J. Silveira, hereby certify that the
foregoing is true to the best of my knowledge and belief.

Signed under the pains and penalties of perjury this
3rd day of December, 2004,



Stacy J. Silveira, BBO # 650675.
Brandon Associates, LLC
160 Commonwealth Avenue
Boston, MA 02116